

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

William L. Needler
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Attorneys for the Debtor
Incredible Auto Sales LLC

IN RE:)	
)	
INCREDIBLE AUTO SALES L.L.C.))	Case No. 06-60855-RBK
)	
)	Judge Ralph B Kirscher
)	
Debtor)	A Chapter 11 Proceedings
)	For Reorganization

DEBTOR/APPELLANT'S DESIGNATION OF RECORD
AND
STATEMENT OF ISSUES ON APPEAL

The Debtor/Appellant, Incredible Auto Sales L.L.C as and for its Designation of Record and Statement of Issues on Appeal states as follows:

I.
DESIGNATION OF RECORD

Filing Date	#	Docket Text
10/17/2006	<u>1</u>	Chapter 11 Voluntary Petition . Receipt Number CC, Fee Amount \$1039 Filed by Incredible Auto Sales LLC. Chapter 11 Plan due by 2/14/2007. Disclosure Statement due by 2/14/2007. All Schedules, Summary of Schedules & Statement of Financial Affairs Due 11/1/2006. Statement of Financial Affairs due 11/1/2006. Summary of schedules due 11/1/2006. Incomplete Filings due by 11/1/2006. (NEEDLER, WILLIAM) (Entered: 10/17/2006)
10/26/2006	<u>17</u>	Motion to Use Cash Collateral Filed by Debtor INCREDIBLE AUTO SALES LLC. (Attachments: # <u>1</u> Exhibit A New Vehicles# <u>2</u> Exhibit B Used Vehicles# <u>3</u> Exhibit 1 Assets# <u>4</u> Exhibit 2 Proforma# <u>5</u> Exhibit 3 Procedure# <u>6</u> Affidavit of Nick Gutierrez) (NEEDLER, WILLIAM) Modified on 10/26/2006 (Myers, Lynn). (Entered: 10/26/2006)
11/01/2006	<u>32</u>	Order Approving Stipulation BETWEEN DEBTOR AND HYUNDAI MOTOR FINANCE CO Signed on 11/1/2006 (related documents(s) <u>29</u> Stipulation). (Attachments: # <u>1</u> CERTIFICATE OF MAILING) (Schelin, Kathy) (Entered: 11/01/2006)
11/05/2006	<u>43</u>	List of Exhibits for Upcoming 11/6/06 2:00 P.M. Hearing. Filed by INCREDIBLE AUTO SALES LLC. (Attachments: # <u>1</u> Exhibit 1 New Vehicles# <u>2</u> Exhibit 2 Used Vehicles# <u>3</u> Exhibit 3 Analysis of Assets securing Hyundai# <u>4</u> Exhibit 4 Proforma# <u>5</u> Exhibit 5 Procedure Cash Collateral# <u>6</u> Exhibit 6 Analysis of DIP & Cash Collateral Accounts# <u>7</u> Exhibit 7 Blue Sky Values# <u>8</u> Exhibit 8 pgs 1-3 Financial Statements# <u>9</u> Exhibit 8 pgs 4-6 Financial Statements# <u>10</u> Exhibit 8 pgs 7-8 Financial Statements# <u>11</u> Exhibit 8 pgs 9-10 Financial Statements# <u>12</u> Exhibit 8 pgs 11-13 Financial Statements# <u>13</u> Exhibit 9 Bridge Reconstruction) (NEEDLER, WILLIAM) (Entered: 11/05/2006)
11/07/2006		Minutes of Hearing Held ON 11/06 AND 11/07/06; NICK GUTIERREZ, DALE UENO. 1) MOTION FOR USE OF CASH COLLATERAL IS AGREED TO BY THE PARTIES AND MONIES TO BE DISBURSED FOR PAYROLL AND INSURANCE EFFECTIVE TODAY;
11/12/2006	<u>54</u>	All Schedules, Statement of Financial Affairs, Statement of Intent & Summary of Schedules Filed by INCREDIBLE AUTO SALES LLC. (NEEDLER, WILLIAM) (Entered: 11/12/2006)

11/13/2006	<u>57</u>	Amendment(s) to: <i>Amended Schedule B and Amended Summary of Schedules [see docket # 54]</i> Filed by INCREDIBLE AUTO SALES LLC. (NEEDLER, WILLIAM) (Entered: 11/13/2006)
11/17/2006	<u>69</u>	Expedited Motion to Modify Stay Receipt Number CC, Fee Amount \$150 Filed by Creditor HYUNDAI MOTOR FINANCE CO. Objection Due by 11/27/2006. (Attachments: # <u>1</u> EXHIBITS A - F) (HINGLE, CHARLES) (Entered: 11/17/2006)
11/20/2006	<u>70</u>	Expedited Motion to Appoint Trustee Filed by Creditor HYUNDAI MOTOR FINANCE CO. Objection Due by 11/30/2006. (Attachments: # <u>1</u> EXHIBITS A-F) (HINGLE, CHARLES) (Entered: 11/20/2006)
11/20/2006	<u>71</u>	Ordered DEBTOR'S EMERGENCY MOTION TO ENTER ORDER APPROVING CASH COLLATERAL STIPULATION IS GRANTED TO THE LIMITED EXTENT THAT DEBTOR IS AUTHORIZED TO USE HYUNDAI MOTOR FINANCE CO'S CASH COLLATERAL FOR THE SOLE PURPOSE OF MAKING THE PAYROLL THAT WAS DUE TO DEBTOR'S CURRENT EMPLOYEES AS OF FRIDAY, 11/17/06, PROVIDED, HOWEVER, THAT DEBTOR MUST SUBMIT A BUDGET FOR SUCH PAYMENT TO THE COURT AND ALL PARTIES IN INTEREST WITHIN FIVE DAYS OF THE DATE OF THIS ORDER. IT IS FURTHER ORDERED THAT THE HEARING SCHEDULED BY HYUNDAI MOTOR FINANCE CO FOR 12/12/06 IS VACATED Signed on 11/20/2006 (related documents(s) <u>66</u> Motion). (Schelin, Kathy) (Entered: 11/20/2006)
11/27/2006	<u>90</u>	Objection/Response to (related document(s): <u>70</u> Expedited Motion to Appoint Trustee filed by Creditor HYUNDAI MOTOR FINANCE CO) (related to motions(s) <u>70</u>) Filed by INCREDIBLE AUTO SALES LLC (related documents(s) <u>70</u> Motion to Appoint Trustee filed by Creditor HYUNDAI MOTOR FINANCE CO). Hearing scheduled for 12/5/2006 at 10:00 AM at BUTTE HEARINGS 400 N MAIN ST; 2ND FL CRTRM, BUTTE, MT. (Attachments: # <u>1</u> Exhibit 3) (NEEDLER, WILLIAM) (Entered: 11/27/2006)
12/07/2006	<u>123</u>	Expedited Motion to Modify Stay Receipt Number cc, Fee Amount \$150 Filed by Creditor AUTO AUCTION ASSOCIATES OF MONTANA, INC. d/b/a AUTO AUCTION OF MONTANA. Objection Due by 12/18/2006. (FAIN, BRUCE) (Entered: 12/07/2006)

12/08/2006	<u>124</u>	Ordered HYUNDAI'S EXPEDITED MOTION TO MODIFY STAY, ALTERNATIVE MOTION FOR APPOINTMENT OF TRUSTEE IS DEEMED SUBMITTED AND UNDER ADVISEMENT. IT IS FURTHER ORDERED DEBTOR IS GRANTED AUTHORITY TO USE CASH COLLATERAL THROUGH 12/21/06. AS SET FORTH BY SEPARATE ORDER OF THIS COURT, A HEARING ON DEBTOR'S MOTION (DOCKET NO 106) SHALL BE HELD 12/19/06 AT 9:00 A.M. IN BILLINGS Signed on 12/8/2006. (Schelin, Kathy) (Entered: 12/08/2006)
12/08/2006	<u>125</u>	Order Granting EXPEDITED JOINT MOTION TO MODIFY STAY OF HYUNDAI MOTOR FINANCE COMPANY AND AUTO AUCTION ASSOCIATES OF MONTANA, INC. (Related Doc # <u>123</u>) Signed on 12/8/2006. . (Schelin, Kathy) (Entered: 12/08/2006)
12/09/2006	<u>126</u>	Amendment to Schedules. <i>First Amendment to Schedules and Statement of Affairs</i> Receipt Number CC, Fee Amount \$26 Filed by INCREDIBLE AUTO SALES LLC. (Attachments: # <u>1</u> Amendment to Schedule F) (NEEDLER, WILLIAM) (Entered: 12/09/2006)
12/07/2006	<u>123</u>	Expedited Motion to Modify Stay Receipt Number cc, Fee Amount \$150 Filed by Creditor AUTO AUCTION ASSOCIATES OF MONTANA, INC. d/b/a AUTO AUCTION OF MONTANA. Objection Due by 12/18/2006. (FAIN, BRUCE) (Entered: 12/07/2006)
12/08/2006	<u>124</u>	Ordered HYUNDAI'S EXPEDITED MOTION TO MODIFY STAY, ALTERNATIVE MOTION FOR APPOINTMENT OF TRUSTEE IS DEEMED SUBMITTED AND UNDER ADVISEMENT. IT IS FURTHER ORDERED DEBTOR IS GRANTED AUTHORITY TO USE CASH COLLATERAL THROUGH 12/21/06. AS SET FORTH BY SEPARATE ORDER OF THIS COURT, A HEARING ON DEBTOR'S MOTION (DOCKET NO 106) SHALL BE HELD 12/19/06 AT 9:00 A.M. IN BILLINGS Signed on 12/8/2006. (Schelin, Kathy) (Entered: 12/08/2006)
12/08/2006	<u>125</u>	Order Granting EXPEDITED JOINT MOTION TO MODIFY STAY OF HYUNDAI MOTOR FINANCE COMPANY AND AUTO AUCTION ASSOCIATES OF MONTANA, INC. (Related Doc # <u>123</u>) Signed on 12/8/2006. . (Schelin, Kathy) (Entered: 12/08/2006)

		12/08/2006)
12/09/2006	126	Amendment to Schedules. <i>First Amendment to Schedules and Statement of Affairs</i> Receipt Number CC, Fee Amount \$26 Filed by INCREDIBLE AUTO SALES LLC. (Attachments: # 1 Amendment to Schedule F) (NEEDLER, WILLIAM) (Entered: 12/09/2006)
01/12/2007	186	Order Granting Motion to Modify Stay of HYUNDAI MOTOR FINANCE COMPANY (Related Doc # 69) IT IS FURTHER ORDERED HYUNDAI MOTOR FINANCE COMPANY'S ALTERNATE Motion to Appoint Trustee IS DENIED (Related Doc # 70). Signed on 1/12/2007. . (Evankovich, Dianne) (Entered: 01/12/2007)
01/22/2007	228	Notice of Appeal to U.S. District Court. Receipt Number CC, Fee Amount \$255. Filed by Debtor INCREDIBLE AUTO SALES LLC (related documents(s) 186 Order on Motion to Modify Stay (Fee Paid), Order on Motion to Modify Stay (Fee Paid), Order on Motion to Appoint Trustee,). Appellant Designation due by 2/1/2007. (Attachments: # 1 Exhibit A Order)(NEEDLER, WILLIAM) (Entered: 01/22/2007)
01/22/2007	229	Election of Appeal to District Court Filed by Debtor INCREDIBLE AUTO SALES LLC (related documents(s) 228 Notice of Appeal, filed by Debtor INCREDIBLE AUTO SALES LLC). (NEEDLER, WILLIAM) (Entered: 01/22/2007)
01/22/2007	230	Notice of Referral of Appeal to District Court Filed by (related documents(s) 228 Notice of Appeal, filed by Debtor INCREDIBLE AUTO SALES LLC). (Attachments: # 1 JUDICIAL ORDER)(Schelin, Kathy) (Entered: 01/22/2007)
01/22/2007	231	Transmittal Memorandum to District Court Filed by (related documents(s) 228 Notice of Appeal, filed by Debtor INCREDIBLE AUTO SALES LLC). (Schelin, Kathy) (Entered: 01/22/2007)
01/22/2007	228	Notice of Appeal to U.S. District Court. Receipt Number CC, Fee Amount \$255. Filed by Debtor INCREDIBLE AUTO SALES LLC (related documents(s) 186 Order on Motion to Modify Stay (Fee Paid), Order on Motion to Modify Stay (Fee Paid), Order on Motion to Appoint Trustee,). Appellant Designation due by 2/1/2007. (Attachments: # 1 Exhibit A Order)(NEEDLER, WILLIAM) (Entered: 01/22/2007)

01/22/2007	229	Election of Appeal to District Court Filed by Debtor INCREDIBLE AUTO SALES LLC (related documents(s) 228 Notice of Appeal, filed by Debtor INCREDIBLE AUTO SALES LLC). (NEEDLER, WILLIAM) (Entered: 01/22/2007)
01/22/2007	230	Notice of Referral of Appeal to District Court Filed by (related documents(s) 228 Notice of Appeal, filed by Debtor INCREDIBLE AUTO SALES LLC). (Attachments: # 1 JUDICIAL ORDER)(Schelin, Kathy) (Entered: 01/22/2007)
01/22/2007	231	Transmittal Memorandum to District Court Filed by (related documents(s) 228 Notice of Appeal, filed by Debtor INCREDIBLE AUTO SALES LLC). (Schelin, Kathy) (Entered: 01/22/2007)

02/01/2007

This Designation of Record and Statement of Issues on Appeal

II.**STATEMENT OF ISSUES ON APPEAL**

The Debtor/Appellant for its issues on appeal states as follows;

- 1.) Whether the Bankruptcy Court under the facts and circumstances was correct in granting an Order to Hyundai Motor Finance, the Appellee herein when the evidence and facts herein support the Debtor's contention that the Appellee is adequately protected under 11 USC Section 361 of the Bankruptcy Coed..
- 2.) Whether the Bankruptcy Court in issuing the Order appealed from was justified in citing certain pre petition improper actions of the Debtor in handling pre petition financial transactions in justifying its Order for Relief when, as a matter of fact, the post petition management of the Debtor had been totally changed as set forth in Orders of this Court and as approved by this Court.

- 3.) Whether the Use of pre petition events by the Bankruptcy Court to justify the Order of 1/12/07 granting Relief from Stay is proper or in error so as to justify an immediate reversal of the 1/12/07 Order?
- 4.) Whether the Bankruptcy Court was correct and was not acting erroneously in lowering the value of the Kia Franchise in its Order where an application to sell the Franchise for \$375,000 was filed and pending with the Court – Is this error not a valid basis to immediately reverse this Order of 1/12/07.
- 5.) Did not this Bankruptcy Court create grievous and reversible error in granting an Order for Relief from the Stay where the Debtor/Appellant without vehicles or the lot and without being able to operate on a normal basis, this event could cause the Debtor/Appellant's valuable franchise to be voided and potentially lose \$375,000 plus other assets to be sold.
- 6.) Based on the facts of this case should not this Order for Relief be immediately reversed?

February 1, 2007

/s/ William L. Needler
Attorney for the Debtor/ Appellant
Incredible Auto Sales L.L.C

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

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Incredible Auto Sales LLC

IN RE:

INCREDIBLE AUTO SALES L.L.C.)

Debtor)

Case No. 06-60855-RBK

Judge Ralph B Kirscher

A Chapter 11 Proceedings
For Reorganization

NOTICE OF FILING

Please be advised that the attached *DEBTOR/APPELLANT'S DESIGNATION OF RECORD AND STATEMENT OF ISSUES ON APPEAL* was filed electronically with the above Bankruptcy Court, Billings, Montana on February 1, 2007.

February 1, 2007

/s/ William L. Needler
Attorney for the Debtor
Incredible Auto Sales L.L.C.

PROOF OF SERVICE

William L. Needler, an Attorney, hereby certifies that the above and foregoing was filed on February 1, 2007 with the Clerk of the Bankruptcy Court using the CM/ECF system, which will electronically notify all persons listed with the Court.

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I also hereby certify that it was served by facsimile on February 1, 2007 from the Attorneys offices.

/s/ William L. Needler

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